IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.MC.No. 2973 of 2007()

M.C.83/07 IN CC.113/03 OF Judicial Magistrate of the First Class-II, Kochi

PETITIONER: ACCUSED NO.2

DR.A.P.PADMINI, AGED 56
W/O.RADHAKRISHNAN, PURATH VEEDU,
7/169 NGO QUARETERS, THRIKKAKARA(NO RESIDING
AT ATHIRA, 120-SOUHRIDA NAGAR,THRIKKAKARA
COCHIN-21)

BY ADV. SRI.B.RAMAN PILLAI

RESPONDENTS: COMPLAINANT & STATE

STATE OF KERALA, REP BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2973 of 2007

Dated this the 27th day of September, 2007

O R D E R

The petitioner is counter petitioner No.1 in proceedings initiated under Section 446 Cr.P.C before the Judicial Magistrate of the First Class-II, Kochi. The impugned order has been passed under Section 446 Cr.P.C directing the petitioner to pay an amount of Rs.4 lakhs consequent to the breach of the obligation of her husband, the 1st accused in the case to produce a vehicle which was released to him on a bond. The impugned order shows that the 1st and 2nd respondents in the proceedings are sureties in the bond. The petitioner is the 1st respondent as stated earlier. In these circumstances, the learned Magistrate had directed the petitioner to pay an amount of Rs.4 lakhs as penalty.

2. The petitioner has come to this Court with a prayer to quash the proceedings by invoking the inherent jurisdiction under Section 482 Cr.P.C.

3. What are the grounds ? The learned counsel for the petitioner submits that the petitioner has not executed any bond for the release of the car to her husband/1st accused. Did the petitioner raise this contention before the learned Magistrate ? The learned counsel for the petitioner submits that the petitioner did not get an

opportunity to raise this contention before the learned Magistrate as she had not been served with any notice.

3. The impugned order is one passed under Section 446 Cr.P.C. The Code provides the avenue under which such an order can be challenged. A properly instituted appeal under Section 449 Cr.P.C is the course open to any person aggrieved by an order under Section 446 Cr.P.C. Normally and ordinarily the petitioner must have preferred an appeal under Section 449 Cr.P.C to assail the impugned order, a copy of which is produced as Annexure-G. The petitioner has not chosen to do so.

4. The learned counsel for the petitioner contends that in as much as the petitioner has not executed any bond at all, she may not be relegated to seek the remedy under Section 449 Cr.P.C. Whether the petitioner has executed a bond or has not executed a bond is a question of fact to be decided. Admittedly that contention was not raised before the learned Magistrate. The petitioner explains that she did not get any notice. It is for her to raise the contention before the appellate court in a properly instituted appeal under Section 449 Cr.P.C, firstly that she did not have any notice before the order under Section 446 Cr.P.C was passed and further that the order is bad for the reason that no bond at all had been executed by her.

5. In proceedings under Section 482 Cr.P.C, this Court shall not take on its shoulders the burden to resolve disputed questions of facts. Such questions of facts must be raised before the courts below at the appropriate stage. It would be idle to expect this Court to permit the petitioner to by-pass the established procedure and come to this Court with the disputed questions of facts and attempt to resolve such controversy. I am, in these circumstances, not persuaded to invoke the jurisdiction under Section 482 Cr.P.C to quash the impugned order.

6. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to challenge the impugned order under Section 449 Cr.P.C by instituting a proper appeal before the appellate court. The learned counsel for the petitioner submits that the appeal would be belated. Needless to say that the petitioner can pray to the appellate court that the delay may be condoned under the relevant provisions of law.

7. Return the copy of the impugned order to the learned counsel for the petitioner forthwith.

(R.BASANT, JUDGE)

rtr/-